

ORDER NO. 1606

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
First-Class Package Service
First-Class Package Service Contract 33

Docket No. MC2013-23

Competitive Product Prices
First-Class Package Service Contract 33
(MC2013-23)
Negotiated Service Agreement

Docket No. CP2013-31

ORDER ADDING FIRST-CLASS PACKAGE SERVICE CONTRACT 33
TO THE COMPETITIVE PRODUCT LIST

(Issued December 28, 2012)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as First-Class Package Service Contract 33 (Contract) to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add First-Class Package Service Contract 33 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 17, 2012 (Request).

II. BACKGROUND

On December 17, 2012, in accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that First-Class Package Service Contract 33 is a competitive product, and one that is “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Postal Service further asserts that the prices and classification underlying the Contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a statement supporting the Request, a certification of compliance with 39 U.S.C. 3633(a), a redacted copy of Governors’ Decision No. 11-6, and a redacted copy of the Contract related to the proposed new product. In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of the Contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.³

On December 18, 2012, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Order No. 563, Docket Nos. MC2011-1 and CP2011-2, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁴ Order No. 1585, Notice and Order Concerning the Addition of First-Class Package Service Contract 33 to the Competitive Product List, December 18, 2012.

III. COMMENTS

The Public Representative filed comments on December 27, 2012.⁵ No other interested person submitted comments. The Public Representative states that he has reviewed the Request, supporting documentation, and supporting financial models. *Id.* at 1. He believes that the Postal Service has demonstrated that the Contract is expected to satisfy the requirements of 39 U.S.C. 3633(a). *Id.* He expresses concern, however, regarding the Postal Service's decision to exempt the mailer from the requirement to apply an Intelligent Mail barcode (IMb) to qualifying mailpieces. He is also concerned that the Contract does not provide reasoning for the exemption. *Id.* at 2.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Contract, the supporting data filed under seal, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request entail assigning First-Class Package Service Contract 33 to either the market dominant or competitive product list. See 39 U.S.C. 3642(b)(1); 39 CFR 3020.34. In addition, the Commission must consider the availability and use of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. 3642(b)(3); 39 CFR 3020.32(f), (g), and (h).

The Postal Service asserts that it provides First-Class Package Service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service affirms that the Contract partner supports the Request, that expedited shipping is widely available from private firms, and that it is

⁵ Public Representative Comments, December 27, 2012 (PR Comments).

unaware of any small business concerns that could offer comparable services to the Contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that First-Class Package Service Contract 33 is appropriately classified as competitive and added to the competitive product list.

Cost considerations. Because First-Class Package Service Contract 33 is a competitive product, the Postal Service must also show that the Contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. 3633(a); 39 CFR 3015.5.

As part of its Request, the Postal Service submitted a certified statement, along with supporting revenue and cost data, which demonstrates that the Contract satisfies the statutory and regulatory requirements. The Public Representative concurs. PR Comments at 1. The Commission finds that First-Class Package Service Contract 33 complies with the provisions applicable to rates for competitive products.

IMb. Although concluding that the Contract satisfies the requirements of 39 U.S.C. 3633, the Public Representative expresses concern about the Postal Service's decision to waive the mailer's requirement to apply IMb to the mailpieces. *Id.* at 1-2. While the point is not without merit, the Postal Service has considerable flexibility to negotiate the terms of its competitive contracts. In negotiating its contracts, the Postal Service must often, as in this case, balance various considerations. The waiver of Domestic Mail Manual section 433.1.4.b is not a bar to approval of the Contract.

Other considerations. By its terms, the Contract becomes effective on the day that the Commission issues all necessary regulatory approvals. Request, Attachment B at 2. The Contract expires on January 27, 2013. *Id.*

If the Contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the Contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by rate category associated with the Contract.

In conclusion, the Commission approves First-Class Package Service Contract 33 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. First-Class Package Service Contract 33 (MC2013-23 and CP2013-31) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.
2. The Postal Service shall notify the Commission if the Contract ends prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the Contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by rate category associated with the Contract.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 CFR part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2013-23 and CP2013-31. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

* * * * *

Negotiated Service Agreements

Domestic

* * * * *

First-Class Package Service Contract 33

* * * * *